

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

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CLAIMANT: Atlee H. Yoder

OBJECTOR: United States of America (USDA Forest Service)

CASE 76D-0021-R-2022
76D 30124531

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 76D 30124531 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received an issue

remark. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. This claim also received an objection from the United States of America (USDA Forest Service).

The Court consolidated this claim into the above-captioned case on August 5, 2022. The Court set a settlement deadline in a subsequent order. The parties filed a stipulation on November 29, 2022.

FINDINGS OF FACT

1. Claim 76D 30124531 appeared with the following issue remark:
DECREE ISSUED 03/22/1984. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D.
2. Objector asserts the point of diversion of this claim incorrectly includes federal land.
3. The parties agree the point of diversion should be described as SWNENW of Section 11, T37N, R28W.
4. The stipulation indicates the objection would be resolved if the point of diversion is modified as agreed upon.
5. The proposed modification would result in the point of diversion matching the place of use for this livestock direct from source claim.
6. The point of diversion of Claim 76D 30124531 should be described as SWNENW of Section 11, T37N, R28W.
7. The issue remark should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record provides the Court with a sufficient basis to resolve and remove the issue remark from the above-captioned claim.

3. The changes described in the Findings of Fact resolve the objection.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Atlee H. Yoder
775 Deer Path Ln
Rexford, MT 59930

Service Via Electronic Mail:

Mark J. Widerschein, Trial Attorney
US Dept of Justice, ENRD-NRS
PO Box 7611
Washington, DC 20044-7611
(202) 532-5803
mark.widerschein@usdoj.gov
MontanaBasins.ENRD@USDOJ.GOV

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 30124531 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: ATLEE H YODER
775 DEER PATH LN
REXFORD, MT 59930

Priority Date: DECEMBER 31, 1941

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: FARRELL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	11	37N	28W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNENW	11	37N	28W	LINCOLN